

SUPPORT FOR THE AMENDMENTS

Claim 1 has been amended.

Claims 8-24 have been added.

Support for the amendment to Claim 1 and for the introduction of Claims 8-12 is provided by original Claims 1-6. Support for new Claims 13-24 is provided for by page 3, lines 16-27.

No new matter has been entered by the present amendments.

REMARKS

Claims 1-24 are pending in the present application.

The rejections of: (a) Claims 1, 2, and 4-7 under 35 U.S.C. §102(b) over Okawa et al, and (b) Claim 3 under 35 U.S.C. §103(a) over Okawa et al, are obviated in part by amendment and traversed in part.

In the outstanding Office Action the Examiner has alleged that Okawa et al anticipate and/or render obvious the claimed invention. Setting aside the Examiner's allegation that "Flavor Holder" produced by T. Hasegawa Co., Ltd. used in Example 5 of the present application is the same as the coffee bean extract employed by Okawa et al in Examples 3-11, the Examiner alleges that Okawa et al disclose all the concentrations and ratios set forth in Claim 1. Applicants disagree with this position for several reasons.

First, the Examiner cites paragraphs [0014]-[0015] and alleges that "the coffee bean extract contains from 0.3 to 3.6% chlorogenic acid, which comprises isochlorogenic acid." What is not clear is whether the Examiner is cited the present application or Okawa et al. In either event, neither the present application nor Okawa et al disclose this purported concentration of chlorogenic acid either explicitly or inherently. Accordingly, this citation by the Examiner is misplaced.

Second, Okawa et al fail to specifically disclose or suggest any concentrations of chlorogenic acids or the weight ratio of isochlorogenic acids to the chlorogenic acid mixture. In paragraph [0015], Okawa et al disclose the contents of an extract of coffee beans and in so doing disclose that the chlorogenic acid to caffeine weight ratio of 2 or greater. Certainly this disclosure is overbroad and insufficient to permit the artisan to envisage the range as claimed with sufficient specificity.

At best, looking at the Examples, it is possible that Okawa et al disclose compositions meeting limitation (a) of Claim 1 (and Claim 7) to the extent that the amount of chlorogenic acids and, perhaps (assuming, *arguendo*, that the Flavor Holder in the present application is the same as that disclosed by Okawa et al), the weight ratio of isochlorogenic acids to the chlorogenic acid mixture. But, Okawa et al fail to disclose *all the requirements of limitation (b)* of Claim 1 (and Claim 7). Specifically, Okawa et al fail to disclose or suggest that presence of a hydroxycarboxylic acid in a quantity ranging from 5 to 30 times the weight content of ingredient (a).

In Table 1, Okawa et al provides a disclosure of four coffee bean extracts. This table is informative and can be completed to add columns corresponding to (i) the relative amount of the chlorogenic acid/caffeine mixture that is chlorogenic acids (calculated by converting the ratio to a percentage), and (ii) the amount of chlorogenic acids in the coffee bean extract. This expanded table would appear as follows:

	Dry solid content (%)	Chlorogenic acid/caffeine contained in Coffee Bean Extract		Percent (%) Chlorogenic acid in chlorogenic acid/caffeine component	Percent (%) Chlorogenic acid in Coffee Bean Extract
		Total (%)	Ratio		
Coffee Bean Extract 1	71	51	1.2	54.5	27.8
Coffee Bean Extract 2	58	39	2.5	71.4	27.8
Coffee Bean Extract 3	53	34	4.8	82.8	28.1
Coffee Bean Extract 4	48	29	28.0	96.6	28.0

Of the foregoing, only Coffee Bean Extract 3 (identified as "Flavor Holder FH1041") was used in admixture with a hydroxycarboxylic acid. Looking at Examples 3, 4, 6, and 7, which utilize Coffee Bean Extract 3, the following table is provided which shows the amounts of the ingredients of interest in these Examples:

	Citric Acid (%)	Ascorbic Acid (%)	Coffee Bean Extract 3 (%)
Example 3	2	--	3.6
Example 4	1.5	2.5	3.6
Example 6	0.05	--	1.8
Example 7	0.3	0.03	0.36

Adding columns to the foregoing table for the relative ratios of component (b)/(a), the following result is obtained:

	(b)		Coffee Bean Extract 3 (%)	(a)	(b)/(a)
	Citric Acid (%)	Ascorbic Acid (%)		Amount of chlorogenic acids (%)	
Example 3	2	--	3.6	1.01	1.98
Example 4	1.5	2.5	3.6	1.01	3.96
Example 6	0.05	--	1.8	0.50	0.10
Example 7	0.3	0.03	0.36	0.10	2.97

The fact that the ratio of (b)/(a) is less than 5 to 30 times for the presence of a hydroxycarboxylic acid relative to the weight content of ingredient (a) appears to be a critical defect in the disclosure of Okawa et al. Tables 1 and 2 of the present application clearly show the importance of the lower threshold limit of 5 (see pages 9 and 10 of the present specification). Most importantly, when looking at Example 5 (coffee bean extract example) in Table 1 and comparing this example to Comparative Example 5 (coffee bean extract comparative example) in Table 2, we see that when the (b)/(a) ratio is below the claimed threshold the resultant beverages have a lower brix (mass ratio of dissolved sucrose to water in the liquid), and a poorer taste and dreg formation.

Only Examples 7-9 of Okawa et al relate to beverages. The invention of Claims 1 and 7 relate to beverages which contain 30 to 99.7 % by weight of water. Regardless of whether the preamble limitation "beverage" is given weight, ingredient (c) must still be met by the

disclosure of Okawa et al. To this end, the specification of Okawa et al provides no disclosure relating to the amount of water permitted. At best, it could be argued that Examples 6-9 and 11 of Okawa et al meet limitation (c) with respect to the water content. However, as stated above, Examples 6 and 7 of Okawa et al fail to meet the limitation of the (b)/(a) ratio and Examples 8 and 11 of Okawa et al fail to include a hydroxycarboxylic acid. Therefore, Examples 6-8 and 11 of Okawa et al fail to meet limitation (b) in the claimed invention.

With respect to Example 9 of Okawa et al, Vitamin C (ascorbic acid) is contained in an amount of 2000 mg and Coffee Bean Extract 3 (identified as “Flavor Holder FH1041”) in an amount of 360 mg. Even if this Example meets the limitation with respect to the ratio between ingredient (a) and the hydroxycarboxylic acid in ingredient (b), Example 9 of Okawa et al does not contain either a vegetable-derived flavor substance or a fruit-derived flavor substance, much less in the claimed amendments, as required by Claims 1 and 7.

In view of the foregoing, Applicants submit that Okawa et al do not anticipate and/or render obvious the present invention when the claimed beverage. Specifically, Okawa et al fails to disclose or suggest all the limitations of the claimed invention (e.g., fails to disclose all the limitations of ingredient (b) appearing Claims 1 and 7).

Applicants request withdrawal of these grounds of rejection.

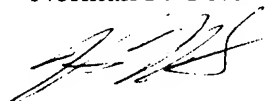
Application Serial No. 10/518,372
Reply to Office Action of October 31, 2007

Applicants submit that the present application is now in condition for allowance.

Early notification of such action is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.
Norman F. Oblon

A handwritten signature in black ink, appearing to read 'V. Shier', is written over the printed name of Vincent K. Shier.

Vincent K. Shier, Ph.D.
Registration No. 50,552

Customer Number
22850

Tel: (703) 413-3000
Fax: (703) 413-2220
(OSMMN 08/03)